



# भारत का राजपत्र The Gazette of India

असाधारण

EXTRAORDINARY

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PART II — Section 2

प्राधिकार से प्रकाशित

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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।  
Separate paging is given to this Part in order that it may be filed as a separate compilation.

## LOK SABHA

The following Bills were introduced in the Lok Sabha on 23rd August, 2007:—

BILL NO. 65 OF 2007

*A Bill to amend the Trade Marks Act, 1999.*

BE it enacted by Parliament in the Fifty-eighth Year of the Republic of India as follows:—

1. (1) This Act may be called the Trade Marks (Amendment) Act, 2007.

Short title and  
commencement.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

47 of 1999.

2. In section 21 of the Trade Marks Act, 1999 (hereinafter referred to as the principal Act), for sub-section (1), the following sub-section shall be substituted, namely:—

Amendment  
of section 21.

“(1) Any person may, within three months from the date of the advertisement or re-advertisement of an application for registration, give notice in writing in the prescribed manner and on payment of such fee as may be prescribed, to the Registrar, of opposition to the registration.”

Amendment  
of section 23.

3. In section 23 of the principal Act, in sub-section (1), after the words "register the said trade mark", the words "within eighteen months of the filing of the application" shall be inserted.

Insertion of  
new Chapter  
IVA.

4. After Chapter IV of the principal Act, the following Chapter shall be inserted, namely:—

#### CHAPTER IVA

##### SPECIAL PROVISIONS RELATING TO PROTECTION OF TRADE MARKS THROUGH INTERNATIONAL REGISTRATION UNDER THE MADRID PROTOCOL

Application of  
Act in case of  
international  
registration  
under Madrid  
Protocol.

36A. The provisions of this Chapter shall apply to international applications and international registrations under the Madrid Protocol.

Definitions  
and interpreta-  
tion.

36B. In this Chapter, unless the context otherwise requires,—

(a) "application", in relation to a Contracting State or a Contracting Organisation, means an application made by a person who is a citizen of or is domiciled in or has a real and effective industrial or commercial establishment in that Contracting State or a State which is a member of that Contracting Organisation, as the case may be;

(b) "basic application" means an application for the registration of a trade mark filed under section 18 and which is used as a basis for applying for an international registration;

(c) "basic registration" means the registration of a trade mark under section 23 and which is used as a basis for applying for an international registration;

(d) "Common Regulations" means the Regulations concerning the implementation of the Madrid Protocol;

(e) "Contracting Organisation" means a Contracting Party that is an inter-governmental organisation;

(f) "Contracting Party" means a Contracting State or Contracting Organisation party to the Madrid Protocol;

(g) "Contracting State" means a country party to the Madrid Protocol;

(h) "international application" means an application for international registration or for extension of the protection resulting from an international registration to any Contracting Party made under the Madrid Protocol;

(i) "International Bureau" means the International Bureau of the World Intellectual Property Organisation;

(j) "international registration" means the registration of a trade mark in the register of the International Bureau effected under the Madrid Protocol;

(k) "Madrid Agreement" means the Madrid Agreement Concerning the International Registration of Marks adopted at Madrid on the 14th day of April, 1891, as subsequently revised and amended;

(l) "Madrid Protocol" means the Protocol relating to the Madrid Agreement Concerning the International Registration of Marks adopted at Madrid on the 27th day of June, 1989, as amended from time to time.

Trade Marks  
Registry to  
deal with  
international  
applications.

36C. Notwithstanding anything contained in sub-section (3) of section 5, an international application shall be dealt with by the head office of the Trade Marks Registry or such branch office of the Registry, as the Central Government may, by notification in the Official Gazette, specify.

5404.4.89

36D. (1) Where an application for the registration of a trade mark has been made under section 18 or a trade mark has been registered under section 23, the applicant or the registered proprietor may make an international application on the form prescribed by the Common Regulations for international registration of that trade mark.

International applications originating from India.

(2) A person holding an international registration may make an international application on the form prescribed by the Common Regulations for extension of the protection resulting from such registration to any other Contracting Party.

(3) An international application under sub-section (1) or sub-section (2) shall designate the Contracting Parties where the protection resulting from the international registration is required.

(4) The Registrar shall certify in the prescribed manner that the particulars appearing in the international application correspond to the particulars appearing, at the time of the certification, in the application under section 18 or the registration under section 23, and shall indicate the date and number of that application or the date and number of that registration as well as the date and number of the application from which that registration resulted, as the case may be, and shall as soon as may be, forward the international application to the International Bureau for registration, also indicating the date of the international application.

(5) Where at any time before the expiry of a period of five years of an international registration, whether such registration has been transferred to another person or not, the application under section 18 or the registration under section 23, as the case may be, has been withdrawn or cancelled or has expired or has been finally refused in respect of all or some of the goods or services listed in the international registration, the protection resulting from such international registration shall be of no effect:

Provided that where an appeal is made against the decision of registration, an action requesting for withdrawal of application or an opposition to the application has been initiated before the expiry of the period of five years of an international registration, any final decision resulting into withdrawal, cancellation, expiration or refusal shall be deemed to have taken place before the expiry of five years of the international registration.

(6) The Registrar shall, during the period of five years beginning with the date of international registration, transmit to the International Bureau every information referred to in sub-section (5).

(7) The Registrar shall notify the International Bureau the cancellation to be effected to an international registration keeping in view the current status of the basic application or the basic registration, as the case may be.

36E. (1) The Registrar shall, after receipt of an advice from the International Bureau about any international registration where India has been designated, keep a record of the particulars of that international registration in the prescribed manner.

International registrations where India has been designated.

(2) Where, after recording the particulars of any international registration referred to in sub-section (1), the Registrar is satisfied that in the circumstances of the case the protection of trade mark in India should not be granted or such protection should be granted subject to conditions or limitations or to conditions additional to or different from the conditions or limitations subject to which the international registration has been accepted, he may, after hearing the applicant if he so desires, refuse grant of protection and inform the International Bureau in the prescribed manner within eighteen months from the date on which the advice referred to in sub-section (1) was received.

(3) Where the Registrar finds nothing in the particulars of an international registration to refuse grant of protection under sub-section (2), he shall without any delay cause such international registration to be advertised in the prescribed manner.

(4) The provisions of sections 9 to 21 (both inclusive), 63 and 74 shall apply *mutatis mutandis* in relation to an international registration as if such international registration was an application for registration of a trade mark under section 18.

(5) When the protection of an international registration has not been opposed and the time for notice of opposition has expired, the Registrar shall within a period of eighteen months of the receipt of advice under sub-section (1) notify the International Bureau its acceptance of extension of protection of the trade mark under such international registration and, in case the Registrar fails to notify the International Bureau, it shall be deemed that the protection has been extended to the trade mark.

(6) Where a registered proprietor of a trade mark makes an international registration of that trade mark and designates India, the international registration from the date of the registration shall be deemed to replace the registration held in India without prejudice to any right acquired under such previously held registration and the Registrar shall, upon request by the applicant, make necessary entry in the Register referred to in sub-section (1) of section 6.

(7) A holder of international registration of a trade mark who designates India and who has not been extended protection in India shall have the same remedy which is available to any person making an application for the registration of a trade mark under section 18 and which has not resulted in registration under section 23.

(8) Where at any time before the expiry of a period of five years of an international registration, whether such registration has been transferred to another person or not, the related basic application or, as the case may be, the basic registration in a Contracting Party other than India has been withdrawn or cancelled or has expired or has been finally refused in respect of all or some of the goods or services listed in the international registration, the protection resulting from such international registration in India shall cease to have effect.

Effects of  
international  
registration.

36F. (1) From the date of the international registration of a trade mark where India has been designated or the date of the recordal in the register of the International Bureau about the extension of the protection resulting from an international registration of a trade mark to India, the protection of the trade mark in India shall be the same as if the trade mark had been registered in India.

(2) The indication of classes of goods and services given by the applicant shall not bind the Registrar with regard to the determination of the scope of the protection of the trade mark.

Duration and  
renewal of  
international  
registration.

36G. The international registration of a trade mark at the International Bureau shall be for a period of ten years and may be renewed for a period of ten years from the expiry of the preceding period.

Omission of  
sections 40,  
41 and 42.

5. Sections 40, 41 and 42 of the principal Act shall be omitted.

Substitution of  
new section  
for section 45.

6. For section 45 of the principal Act, the following section shall be substituted, namely:—

Registration of  
assignments  
and  
transmissions.

“45 (1) Where a person becomes entitled by assignment or transmission to a registered trade mark, he shall apply in the prescribed manner to the Registrar to register his title, and the Registrar shall, on receipt of the application, register him as the proprietor of the trade mark in respect of the goods or services in respect of which the assignment or transmission has effect, and shall cause particulars of such assignment or transmission to be entered on the register.

(2) The Registrar may require the applicant to furnish evidence or further evidence in proof of title only where there is a reasonable doubt about the veracity of any statement or any document furnished.

(3) Where the validity of an assignment or transmission is in dispute between the parties, the Registrar may refuse to register the assignment or transmission until the rights of the parties have been determined by a competent court and in all other cases the Registrar shall dispose of the application within the prescribed period.

(4) Until an application under sub-section (1) has been made, the assignment or transmission shall be ineffective against a person acquiring a conflicting interest in or under the registered trade mark."

7. Chapter X of the principal Act shall be omitted.

Omission of  
Chapter X.

8. In section 150 of the principal Act, in sub-section (1), for the word "applications", the words "applications, international applications" shall be substituted.

Amendment of  
section 150.

9. In section 157 of the principal Act, in sub-section (2), —

Amendment of  
section 157.

(a) for clause (vii), the following clause shall be substituted, namely:—

"(vii) the manner of giving a notice of opposition and the fee payable for such notice under sub-section (1) and sending counter-statement under sub-section (2) and submission of evidence and the time therefor under sub-section (4) of section 21;"

(b) after clause (ix), the following clauses shall be inserted, namely:—

"(ixa) the manner of certifying the particulars by the Registrar under sub-section (4) of section 36D;

(ixb) the manner of keeping a record of particulars of an international registration under sub-section (1) of section 36E;

(ixc) the manner of informing the International Bureau under sub-section (2) of section 36E;

(ixd) the manner of advertising the international registration under sub-section (3) of section 36E;"

(c) clauses (x) and (xi) shall be omitted;

(d) after clause (xiii), the following clause shall be inserted, namely:—

"(xiiia) the period within which the Registrar shall dispose of an application under sub-section (3) of section 45;"

(e) clauses (xxvi), (xxvii) and (xxviii) shall be omitted.

10. (1) Notwithstanding anything contained in section 156 of the principal Act, if any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as may appear to it to be necessary for removing such difficulty:

Power of  
Central  
Government  
to remove  
difficulties.

Provided that no order shall be made under this section after the expiry of five years from the commencement of this Act.

(2) Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.

## STATEMENT OF OBJECTS AND REASONS

At present, a person desirous of obtaining registration of his trade mark in other countries has to make separate applications in different languages and pay different fees in the respective countries. There is no provision under the Trade Marks Act, 1999 (hereinafter referred to as Trade Marks Act) to facilitate Indian nationals as well as foreign nationals to secure simultaneous protection of trade marks in other countries.

2. The Madrid Protocol, administered by the International Bureau of the World Intellectual Property Organisation (WIPO), a specialised agency of the United Nations, was adopted in 1989. The Madrid Protocol is a simple, facilitative and cost-effective system for international registration of trade marks. It enables the nationals of the Member countries of the Protocol to obtain protection of trade marks within the prescribed period of 18 months by filing a single application with one fee and in one language in their country of origin, which in turn is transmitted to the other designated countries through the International Bureau.

3. Accession to the Madrid Protocol will entail amendments to the Trade Marks Act. For this purpose, it is proposed to suitably amend the Trade Marks Act and to incorporate therein a new Chapter IVA containing special provisions relating to protection of international registration of trade marks under the Madrid Protocol. It is sought to empower the Registrar of Trade Marks to deal with international applications originating from India as well as those received from the International Bureau and maintain record of international registrations. Definitions of new terms are being given. It is further proposed to provide for the effect of international registration, duration and its renewal.

4. It is also proposed to reduce the time period of filing a notice of opposition of published applications from four months to three months for speedy disposal of proceedings. Further, with a view to simplify the law relating to transfer of ownership of trade marks by assignment or transmission and to bring the law generally in tune with international practice and modern business needs, sections 40, 41 and 42 are being omitted and section 45 is proposed to be modified. It is also proposed to omit Chapter X of the Trade Marks Act dealing with special provisions for textile goods, as it has now become redundant.

5. The Bill seeks to achieve the above objects.

NEW DELHI,

The 10th May, 2007.

KAMAL NATH.

34504.07.9.

## FINANCIAL MEMORANDUM

By the Trade Marks (Amendment) Bill, 2007, provisions are made for providing protection to international registration of trade marks and to facilitate applicants from India to secure protection of their trade marks in various countries as may be designated by them in accordance with the Madrid system. The Trade Marks Registry acting as an office of origin in respect of applications originating from India will be responsible for certification of international applications received by it that the particulars mentioned correspond to the application pending or registered with it and transmit them immediately to WIPO for registration and thereafter forwarding it to the designated countries where protection is sought. Additional work will devolve on the Trade Marks Registry in the matter of dealing with international registrations where India is designated as Contracting Party for protection of trade marks. The proposed amendment imposes strict time limits on the Registrar to dispose of applications for registration of trade marks generally and in the matter of protection of international trade marks under the Madrid Protocol. Since the work will be performed exclusively by the Head Office or a branch office of the Registry specially designated and notified by the Central Government in this behalf to administer the provisions of the amending Act, the infrastructure at the Registry both in terms of manpower and equipment, will be augmented.

With a view to build on the existing capabilities and further strengthening the Intellectual Property (IP) administration to make it globally accredited for providing effective and efficient services to IP community, a Plan proposal for Modernisation of IP offices has been prepared and submitted to the competent authority for approval. The proposal addresses the concerns of reliability, effectiveness and user-friendliness of the procedures and has the capability to deal with increasing workload. It also focuses on the need of taking up on priority basis capacity building, public awareness and sensitization of the IP users to achieve global standards. It is expected that the additional manpower and infrastructural facilities proposed under the Plan Scheme during the 11th Plan period will take care of the needs of the organisation in the administration of the provisions of the amendment Bill. Requisite funds have also been allocated and provided in the Budget. As such, no separate financial commitment is sought on account of this Bill.

## MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 9 of the Trade Marks (Amendment) Bill, 2007 proposes to amend section 157 of the Trade Marks Act, 1999. The said section empowers the Central Government to make rules to carry out the provisions of the Trade Marks Act and also enumerates certain matters specifically in sub-section (2) thereof. The said sub-section has been proposed to be amended to also enumerate therein the following matters:—

(a) the manner of giving a notice of opposition and the fee payable for such notice under sub-section (1) of section 21;

(b) the manner of certifying the particulars by the Registrar under sub-section (4) of section 36D;

(c) the manner of keeping a record of particulars of international registration under sub-section (1) of section 36E;

(d) the manner of informing the International Bureau under sub-section (2) of section 36E;

(e) the manner of advertising the international registration under sub-section (3) of section 36E; and

(f) the period within which the Registrar shall dispose of an application under sub-section (3) of section 45.

2. The aforesaid matters relate to procedure and administrative details and it is not practical to provide for them in the Bill itself. The delegation of legislative power is, therefore, of a normal character.



## BILL No. 69 OF 2007

*A Bill to authorise payment and appropriation of certain further sums from and out of the Consolidated Fund of India for the services of the financial year 2007-08 for the purposes of Railways.*

BE it enacted by Parliament in the Fifty-eighth Year of the Republic of India as follows:—

1. This Act may be called the Appropriation (Railways) No. 3 Act, 2007.
2. From and out of the Consolidated Fund of India there may be paid and applied sums not exceeding those specified in column 3 of the Schedule amounting in the aggregate to the sum of two hundred seventy crore and fifty thousand rupees towards defraying the several charges which will come in course of payment during the financial year 2007-08, in respect of the services relating to Railways specified in column 2 of the Schedule.
3. The sums authorised to be paid and applied from and out of the Consolidated Fund of India by this Act shall be appropriated for the services and purposes expressed in the Schedule in relation to the said year.

Short title.

Issue of Rs.  
270,00,50,000  
out of the  
Consolidated  
Fund of India  
for the financial  
year 2007-08.

Appropriation.

## THE SCHEDULE

(See sections 2 and 3)

1	2	3		
No. of Vote	Services and purposes	Sums not exceeding		
		Voted by Parliament	Charged on the Consolidated Fund	Total
		Rs.	Rs.	Rs.
16	Assets—Acquisition, Construction and Replacement <i>Other Expenditure</i>			
	Capital	270,00,10,000	..	270,00,10,000
	Railway Funds	30,000	..	30,000
	Railway Safety Fund	10,000	..	10,000
	TOTAL	270,00,50,000	..	270,00,50,000

10.10.72

**STATEMENT OF OBJECTS AND REASONS**

This Bill is introduced in pursuance of article 114(1) of the Constitution of India, read with article 115 thereof, to provide for the appropriation out of the Consolidated Fund of India of the moneys required to meet the supplementary expenditure charged on the Consolidated Fund of India and the grants made by the Lok Sabha for expenditure of the Central Government on Railways for the financial year 2007-08.

**LALU PRASAD.**

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**PRESIDENT'S RECOMMENDATION UNDER ARTICLE 117 OF  
THE CONSTITUTION OF INDIA**

[Copy of letter No. 2007-B-402/MS/2, dated 17th August, 2007 from Shri Lalu Prasad, Minister of Railways to the Secretary-General, Lok Sabha]

The President, having been informed of the subject matter of the proposed Appropriation Bill to authorize payment and appropriation of certain further sums from and out of the Consolidated Fund of India for the services of the financial year 2007-08 for the purposes of Railways, recommends under clauses (1) and (3) of article 117 of the Constitution of India, read with clause (2) of article 115 thereof, the introduction in and consideration by Lok Sabha, of the Appropriation Bill.

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**P.D.T. ACHARY,**  
*Secretary-General.*